

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HONORABLE ROBERT H. CLELAND

No. 11-20066-2 & 11-20129-6

PAUL ANTHONY DARRAH,

Defendant.

_____/

APPEAL OF BOND ORDER HEARING

Monday, July 23, 2012

Appearances:

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- - -

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Detroit, Michigan

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4:20 p.m.

- - -

THE CLERK: Calling Case Number 11-20129,
Defendant 6, and Case Number 11-20066, Defendant 2,
United States v. Paul Anthony Darrah.

Counsel, will you please state your appearances for the
record.

MR. STRAUS: Yes. Good afternoon, Your Honor. For
the record, Eric Straus on behalf of the United States.

MS. MACERONI: Good afternoon, Your Honor.
Patricia Maceroni on behalf of Paul Darrah, who is present and
seated to my left.

THE COURT: Okay, noted. The defendant's presence is
noted, of course. He is currently in custody. The question is
his status with respect to release or detention, and I
understand that the magistrate judge handling the arraignments
this afternoon would admit him to a \$10,000 unsecured bond. I
think that's correct, in any event.

MR. STRAUS: That's correct, Your Honor.

THE COURT: And Mr. Straus for the Government seeks a
review, seeks an appeal of that determination or the substance
of that determination.

MR. STRAUS: That's correct.

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1 **THE COURT:** And I then ask what you wish to present.

2 **MR. STRAUS:** Thank you, Your Honor.

3 Your Honor, I don't know if the Court has had an
4 opportunity to review the pleading entitled Government's
5 Written Proffer in Support of its Request for Detention Pending
6 Trial.

7 **THE COURT:** I have.

8 **MR. STRAUS:** That has -- with some oral
9 supplementation, that was primarily the basis of the
10 Government's request. I will just supplement that with some
11 additional argument.

12 As the Court is aware from a review of that document,
13 Mr. Darrah is the national vice president of the Devil's
14 Disciples Motorcycle Club. That is the entity which has been
15 charged as an enterprise for purposes of Title 18 United States
16 Code 1961, that is, a Rico enterprise. He is a long-time
17 member of the Devil's Disciples.

18 It's probably worth mentioning that, of the 41 defendants
19 indicted on the 129 Rico indictment, the Government has
20 requested detention on only 13, in addition to two out-of-state
21 defendants. Obviously Mr. Darrah is one of those individuals.

22 The basis for the Government's motion for detention is
23 two fold. The Government believes he is a risk of flight and a
24 danger to the community, notwithstanding the Pretrial Services
25 recommendation. I suppose the Court can take judicial notice

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1 of the fact that I guess in the upside-down world of organized
2 crime and gangs it is often the leaders of the organization who
3 seek to insulate themselves from criminal liability who are
4 oftentimes the most dangerous by virtue of their leadership
5 roles and not necessarily, for lack of a better term, their
6 leg-breaking abilities.

7 Obviously Mr. Darrah has some physical infirmities that
8 I'm sure will be brought to the Court's attention. However, it
9 is worth noting that, in terms of his current condition, which
10 I believe is termed a trachea -- or trachea operation, it is
11 noteworthy that some of the conversations that the Government
12 has noted in the written proffer were engaged in after
13 Mr. Darrah's operation. So, in other words, he is not
14 incapable of carrying out and continuing to carry out his
15 leadership role in directing the activities to commit acts of
16 violence.

17 I would also note that Mr. Darrah is a defendant in the
18 other indictment wherein several individuals are charged with
19 conspiring to suborn perjury and obstruct justice in the 2006
20 trial before the Honorable Lawrence P. Zatkoff, United States
21 District Judge. I will proffer to the Court that Mr. Darrah's
22 role was to coach and rehearse the proposed testimony of the
23 two witnesses who were to appear before Judge Zatkoff. One was
24 called by the defense. The other, recognizing that it was
25 probably fairly implausible testimony, was called by the

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1 Government as a rebuttal witness.

2 I take it by all accounts -- John O'Brien was the
3 A.U.S.A. -- by all accounts it effectively neutralized that
4 testimony, but nevertheless it was an example of this criminal
5 enterprise actually successfully putting on perjured testimony,
6 not in state court, but rather in federal court, where the
7 stakes were not that high. It was a felon in possession case,
8 924(c).

9 Here the stakes are very high, and when one considers in
10 terms of predictive analysis, in terms of what people will do
11 in terms of risk of flight or danger to the community,
12 oftentimes the best factors that we can look to are past
13 history. Again, Mr. Darrah is a leader in this organization,
14 has a reputation for violence. Indeed, the pattern of
15 racketeering alleged in the conspiracy to commit Rico had
16 multiple instances of violent acts, including murder.

17 If he were to be released, the Government could well
18 imagine that, consistent with his prior behavior, he would be
19 in a position to lead, rally the troops, and mount what would
20 probably be another effective course of conduct entitled to
21 intimidate and threaten witnesses and/or putative witnesses.
22 That is the Government's concern.

23 **THE COURT:** There are apparently troops to be
24 rallied; that is to say, there are unindicted members of the
25 organization?

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1 **MR. STRAUS:** That is correct, Your Honor.

2 **THE COURT:** In the world, in the community?

3 **MR. STRAUS:** That's correct, in multiple states.

4 **THE COURT:** So it's larger than a 40-some person
5 entity?

6 **MR. STRAUS:** That's correct.

7 **THE COURT:** According to your investigation?

8 **MR. STRAUS:** That's correct.

9 **THE COURT:** How much larger?

10 **MR. STRAUS:** I believe that the Devil's Disciples
11 currently have about 150 members nationwide. It's not terribly
12 large, but --

13 **THE COURT:** So about two-thirds of them remain
14 unindicted?

15 **MR. STRAUS:** That is correct.

16 And that was the point I wanted to make is, when assessing
17 some of the defendants in this case, we have asked the judicial
18 officers to look at their potential for danger to the community
19 in an individual capacity, in other words, foot soldiers. In
20 other instances, such as this defendant, you really have to
21 take a look at the danger to the community in terms of
22 collectively the organization and this individual's ability,
23 again, to lead the troops.

24 Accordingly, we ask that the Court detain Mr. Darrah, of
25 all of the defendants, particularly Mr. Darrah and other

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1 leaders, because of the belief by the Government there are no
2 conditions or combination of conditions that will assure the
3 safety of the community or, as I will talk about in a second,
4 his further appearance.

5 I know he has some health problems. I think, apart from
6 the sympathy factor, that weighs in favor of detention.

7 In terms of the sentence, the potential guideline sentence
8 in this case is I guess --

9 **THE COURT:** You said in your brief it was 360 to
10 life.

11 **MR. STRAUS:** It's significant. Anything less could
12 very well be a life sentence, and as I mentioned to the
13 magistrate judge, Mr. Darrah certainly would be someone that
14 one would expect if released to get out of Dodge because
15 there's very little the Government could imagine in terms of
16 why he would stay to face these charges, particularly
17 considering the quantum of proof that the Government has
18 maintained that it has in this particular case.

19 **THE COURT:** Is this a case described in Subsection F1
20 of 3142, in other words, a detention case, a presumption of
21 detention case?

22 **MR. STRAUS:** It is a presumption case, Your Honor.

23 **THE COURT:** And the structure then of the Court's
24 analysis ordinarily would begin with the -- some sort of
25 acknowledgment of the apparent strength of the evidence, the

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1 defendant's background as revealed through the Pretrial
2 Services initial report, and an observation, I would think,
3 that the Court presumes that detention is appropriate, that is,
4 that no condition or combination of conditions would be
5 sufficient to assure the community's safety or Defendant's
6 response to Court requirements.

7 **MR. STRAUS:** That's correct, Your Honor.

8 **THE COURT:** And then it becomes the Defendant's,
9 one would say, obligation perhaps to present something that
10 might rebut the presumption?

11 **MR. STRAUS:** That's correct, Judge.

12 **THE COURT:** I don't think it ever becomes the
13 Defendant's burden of proof though, does it, under the
14 circumstances under 3142?

15 **MR. STRAUS:** I believe it is a burden-shifting
16 mechanism in terms of presumptions mechanically.

17 **THE COURT:** So the Defendant is expected to present
18 something that would be --

19 **MR. STRAUS:** Rebut the presumption.

20 **THE COURT:** Yes, sufficient.

21 **MR. STRAUS:** To overcome it, I guess would be a
22 better word.

23 **THE COURT:** And to persuade the Court that a
24 condition or combination of conditions may be sufficient to
25 ensure appearance and to reassure the Court about safety of the

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1 community, right?

2 **MR. STRAUS:** That's correct, Your Honor.

3 **THE COURT:** You have wire taps apparently? That's
4 apparent in your brief.

5 **MR. STRAUS:** Yes. Mr. Darrah was the subject of
6 electronic surveillance for about six or seven months, if I
7 recall correctly.

8 **THE COURT:** And the statements that are attributed to
9 him are transcribed from overheard conversations that are on
10 it?

11 **MR. STRAUS:** That's correct, Your Honor.

12 **THE COURT:** In which his voice was identified as the
13 speaker?

14 **MR. STRAUS:** That's correct. In fact, he
15 self-identifies in many conversations as "Pauli."

16 **THE COURT:** I don't have any further questions at
17 this point, Mr. Straus.

18 **MR. STRAUS:** Thank you.

19 **THE COURT:** Ms. Maceroni.

20 **MS. MACERONI:** Thank you, Judge.

21 **THE COURT:** Good afternoon.

22 **MS. MACERONI:** Good afternoon.

23 **THE COURT:** What would you like to present?

24 **MS. MACERONI:** Your Honor, I presented downstairs
25 two exhibits, medical reports, one from the Oakland Primary

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1 Care, which is Mr. Darrah's primary care physician, and then
2 one letter specifically from the surgeon who conducted the
3 tracheostomy on him, if I could present those.

4 **THE COURT:** I think you could probably just proffer
5 the substance of the medical situation. I would imagine
6 offhand Mr. Straus probably would be willing to agree that it's
7 a correct summation of his circumstances.

8 **MS. MACERONI:** Okay. So the Court doesn't want to
9 review these?

10 **THE COURT:** Tell me what is significant about them,
11 and I'm sure Mr. Straus will agree.

12 **MS. MACERONI:** Okay.

13 **THE COURT:** Extensive medical records, I don't know
14 how extensive they are, but just tell me what's going on. He
15 has had a tracheostomy?

16 **MS. MACERONI:** Tracheotomy, yes.

17 **THE COURT:** Tracheotomy.

18 **MS. MACERONI:** Yes.

19 Before I get into his medical records it may make more
20 sense, as far as I'm concerned, with the Court's permission, to
21 deal first with the risk of flight argument that Mr. Straus
22 ended with.

23 The Court, I'm sure, is aware, but I think it bears
24 repeating, that the Devil's Disciples first came to the
25 attention of the federal authorities back in 2009. Mr. Darrah

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1 was named in a criminal complaint. He appeared in District
2 Court. The complaint was ultimately dismissed with the
3 understanding from the A.U.S.A. who was then handling the case,
4 Matthew Schneider, that an indictment would be forthcoming, and
5 if Mr. Darrah wanted to get in front of these criminal
6 allegations, the sooner he came in the better.

7 And that corresponds time wise especially when you look at
8 the phone conversation that's referenced in the proffer from
9 the Government because the last time that Mr. Darrah is caught
10 as a result of the Title III wire tap is I believe in September
11 of 2008 going back and forth with this one other alleged member
12 of the Devil's Disciples.

13 Nothing happened in 2009, nothing occurred in 2010, 2011,
14 and we are more than halfway through 2012 until the indictments
15 were unsealed and everyone was arrested approximately 10 days
16 ago. If my client was going to run, Your Honor, I would submit
17 that he would have run in 2009 when he was told by the
18 Government that the indictments were coming down. Quite
19 frankly, he is a very low risk of flight.

20 **THE COURT:** What was the complaint as revealed to him
21 at that time? What did it charge?

22 **MS. MACERONI:** If I can recall, it was Devil's
23 Disciples, it was drug delivery, conspiracy. There were maybe,
24 I want to say, 10 or 12 individuals named in the complaint.

25 **THE COURT:** So drug distribution?

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1 **MS. MACERONI:** Drug distribution, the Devil's
2 Disciples.

3 **THE COURT:** Well, that's not a crime. What crime was
4 alleged in the complaint?

5 **MS. MACERONI:** Conspiracy.

6 **THE COURT:** Drug distribution, conspiracy.

7 **MS. MACERONI:** Drug distribution and conspiracy, as
8 well as acts of violence, if I recall correctly.

9 **THE COURT:** Charged as a crime or is that part of the
10 conspiracy?

11 **MS. MACERONI:** I wish I had it in front of me, Judge.
12 I just don't know.

13 **THE COURT:** Mr. Straus, are you aware of --

14 **MR. STRAUS:** Your Honor, I believe Mr. Darrah was
15 charged with use of a communication facility during the course
16 of a drug transaction. That's a four-year felony. I don't
17 believe he was charged with anything like he's charged now.

18 **MS. MACERONI:** He may be right. I don't remember,
19 quite frankly.

20 **THE COURT:** Okay.

21 **MS. MACERONI:** But I do know in discussing the matter
22 with Mr. Schneider, who was the A.U.S.A. in charge of the case
23 at the time, that this was like the beginning of their
24 investigation and that the Devil's Disciples were going to go
25 down, quote-unquote. There had been searches of the clubhouse.

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1 There had been undercover hand-to-hand buys. I mean, it was in
2 the process as these things typically do go.

3 The risk of flight is quite low, not only because he's
4 been here for the past three and-a-half, four years. He's
5 maintained the same residence. He's never moved. He's never
6 even changed his phone number. He has a thirteen-year-old son
7 that he takes care of with his wife, his common-law wife of
8 seventeen years.

9 He has strong family ties to this community. He has been
10 a lifelong resident of the Eastern District of Michigan. He
11 has several family members here in the courtroom today with him
12 that have sat through all of the proceedings this afternoon.

13 You know, quite frankly, Your Honor, his medical condition
14 does not behoove him to be someone to go out on the lamb. With
15 the Court's permission, now I will get into some of the medical
16 conditions.

17 He has been treated for the past twelve years at Oakland
18 Primary Care facility primarily for a gene mutation which
19 affects his ability-- for his blood to coagulate. As a result
20 of that mutated gene that affects his blood, he has
21 undergone -- suffered three heart attacks as well as several
22 strokes, the last stroke being in 2011.

23 He is under constant care by the Oakland Primary Care
24 physicians because there is no cure whatsoever for this gene
25 mutation. The only course of treatment is, of course, of

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1 Coumadin, which must be monitored by regular blood tests. At a
2 minimum he has to see the Oakland Primary Care physicians once
3 a month to make sure that the dosages remain level in his
4 system. His physician is quite concerned with his
5 incarceration anywhere, let alone the Wayne County Jail, that
6 Coumadin puts him at a risk for hemorrhage if there is any type
7 of altercation, and not just a physical altercation with
8 another inmate, but perhaps he falls over or falls down.
9 Coumadin puts him at an increased risk of internal bleeding.

10 Oakland Primary Care has him on no less than 14 different
11 medications, for insulin-dependent diabetes, Coumadin, heart
12 medication, as well as the medication that he needs to try and
13 cut down the risk of infection because with a tracheotomy he
14 has a hole in his neck, which goes directly into his upper
15 respiratory system.

16 Of those 14 medications, he's getting five at the Wayne
17 County Jail. The Wayne County Jail, in the 12 days that he has
18 been incarcerated there, has not been able to get him on a
19 constant dose of Coumadin. One shift will give him five pills
20 during the course of a 24-hour day, the next will give him six,
21 and it's not a constant state.

22 Even more importantly, Your Honor, according to the ENT,
23 Dr. Brandeis, who did the tracheotomy, the most important
24 thing -- because this is a hole in his neck which goes directly
25 into his upper respiratory system -- is that the tracheotomy

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1 and the supporting mechanism, which is the tube and the
2 internal plug, for lack of a better term, that goes into the
3 hole and everything else that the Court can take judicial
4 notice of has to be kept as clean as possible.

5 The tracheotomy equipment has to be cleaned daily with
6 peroxide. In the 12 days that he has been at the Wayne County
7 Jail they haven't given him peroxide once. He's supposed to
8 clean it with the sterile package that he gets as part of the
9 prescribed treatment. He hasn't had a sterile package at the
10 Wayne County Jail at all.

11 He's sharing a room in the Wayne County infirmary with a
12 gentleman who has a colostomy bag, Your Honor, and the only way
13 that he can clean his tracheotomy equipment is to wash the
14 stuff in the exact same sink that his roommate uses. So the
15 risk of infection is extremely high, and with that hole in his
16 neck it goes right into his upper respiratory system and his
17 lungs, and Dr. Brandeis is very concerned that there will be
18 severe complications if the tracheotomy is not cared for
19 properly, such as infections of the neck, chest and lungs.

20 In looking at the specific statutory criteria, in
21 rebutting a presumption of danger to the society, the Court can
22 take into consideration specifically someone's physical and
23 mental condition, and the physical condition here puts him at
24 great risk, since they can't take care of him the way that it's
25 supposed to be done, disease and/or early death for Mr. Darrah.

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1 The Government believes that it has an extremely strong
2 case against Mr. Darrah. With all due respect, that's
3 Mr. Straus' position, but quite frankly, Mr. Darrah has been
4 under the eyes of the Federal Government since 2009. The last
5 taped, wire-tapped Title III transcript that we have that is
6 relied on by Mr. Straus took place in 2008.

7 **THE COURT:** When did he have his tracheotomy?

8 **MS. MACERONI:** 2007. If he is such a danger to the
9 community, Judge, he's been out since 2009 when the complaint
10 was dismissed. There's been no allegations of any violent or
11 criminal activity since then.

12 His prior history is reflected in the Pretrial Services
13 Report, and Mr. Straus' proffer is he had two misdemeanor
14 convictions in the 1990's. The last one was in 1997 for
15 possession of marijuana. No violent criminal history
16 whatsoever, no felony convictions whatsoever.

17 You know, there are certain, and Judge Whalen went through
18 quite an extensive list of, restrictions based on him to make
19 sure that he does not engage in any type of dangerous conduct
20 to the society and he's not a risk of flight and would allow,
21 balancing that, allowing him to continue in this continuous,
22 monitored medical care so that his physical condition does not
23 deteriorate any farther. So based on that --

24 **THE COURT:** Has there been any deterioration of his
25 physical situation in the last ten or twelve days?

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1 **MS. MACERONI:** Well, he can't suction out the trach
2 because he has no -- he's supposed to suction out the trach and
3 the tube, and -- I'm going to use the term again because I
4 don't know -- the plug on a daily basis. They have only been
5 able to give him access to a suction machine once every other
6 day. So he's continually getting congested, and his breathing
7 is getting worse. From what he tells me yesterday when I saw
8 him at the jail, his breathing is getting much worse.

9 He's also been prescribed two different nebulizers or
10 inhalers with prescription medications to help keep his lungs
11 clean as well as to act as an antibiotic, and they are detailed
12 in Exhibit 1, so that it cuts down on the risk of infection,
13 even when he's at home taking care of his machine and his trach
14 the way he's supposed to do. He has absolutely no access
15 whatsoever to those prescribed antibiotic nebulizers. That was
16 part of the 14 that I referred to earlier that the jail just
17 doesn't have. The jail doesn't have peroxide that they can
18 give him. They certainly are not equipped to give him the
19 nebulizers with the antibiotic solution in there to keep his
20 lungs clean. So he has gotten much more congested in the
21 twelve days since he's been incarcerated.

22 He's greatly concerned about the state of the equipment
23 itself because the tubing and everything needs to be replaced
24 every 30 days just because of the constant wear and tear. He
25 is completely out of air on one tank, and he's been

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1 replenishing the other tank as much as he can, but again,
2 supplies are limited with what the jail can offer, along with
3 the rate of the risk of infection.

4 So the antibiotic that he was on when he came into the
5 jail twelve days ago is gone, and he was told by the jail it is
6 not going to be replaced unless he spikes a fever or does
7 something else. So that preventative piece of medication is
8 now no longer there.

9 **THE COURT:** It's a different doctor's review of the
10 necessity of the situation, I take it. When you say "the jail
11 said no replacement," you mean a physician in the employment, I
12 would imagine, of Wayne County?

13 **MS. MACERONI:** The only person that I have been able
14 to talk to, quite frankly, is the head nurse. That's what
15 she's telling me. I have not talked to a physician at all, so
16 I'm not sure of the hierarchy of the medical, of the medical
17 department over there. This is just what she's telling me is
18 available at the jail.

19 **THE COURT:** So he has these physical ailments and
20 circumstances. What else?

21 Mr. Straus, do you accept all of those statements
22 proffered by counsel?

23 **MR. STRAUS:** I have no reason to dispute those,
24 Your Honor.

25 **THE COURT:** All right.

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1 **MR. STRAUS:** Other than just to make the comment the
2 Agent, apparently during numerous FBI surveillances between
3 2008 and today's date, I don't think anyone has ever observed
4 Mr. Darrah using an oxygen tank, for whatever that's worth.

5 **MS. MACERONI:** Judge, I would object to any new
6 evidence coming into today's hearing, especially notes passed
7 back and forth. I mean, I agreed downstairs --

8 **THE COURT:** That isn't the basis for an objection.

9 **MS. MACERONI:** Well, Your Honor, I think it is. I
10 mean, this is an appeal of a record that was made downstairs,
11 and I agreed --

12 **THE COURT:** It's a de novo determination.

13 **MS. MACERONI:** Well, I agreed downstairs to the
14 written proffer so that the agent would not have to go up and
15 testify on the stand. If he's going to be asserting new
16 testimony here, then, you know, I just think that that's not
17 appropriate, and I would like the objection noted.

18 **THE COURT:** It's noted, but I don't agree with it.
19 This is a de novo determination, and the parties can present
20 testimony, documents, proffers, whatever they may decide as far
21 as I'm concerned.

22 **MS. MACERONI:** My response to that would be then as
23 an offer of proof, ever since I have met Mr. Darrah in 2009, he
24 has always had his oxygen tank, I mean that's just -- and the
25 medical records support that.

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1 **THE COURT:** Okay.

2 **MS. MACERONI:** His medical condition -- my review of
3 the risk of flight analysis is completely opposite to
4 Mr. Straus'. I mean, you know, if he was going to run, he
5 would have run by now, very strong family support, and the
6 medical condition also does not make him a very good risk of
7 flight because there's no way he can get the medical treatment
8 that he needs, you know, living in Motel 6's based on just how
9 stringent he has to be with sterilization and taking care of
10 his medical complaints.

11 **THE COURT:** All right. Is that it?

12 **MS. MACERONI:** That's it, Your Honor.

13 **THE COURT:** All right. Thank you.

14 Mr. Straus, anything final?

15 **MR. STRAUS:** Just briefly.

16 It strikes the Government that the -- and I'm not well
17 versed in any of these medical conditions, but I did not hear
18 anything suggesting that these types of things could not be
19 taken care of in an appropriate medical facility within the
20 prison system, one, and I think that's key.

21 Also, again, Mr. Darrah was charged with a four-year
22 felony and the complaint was dismissed. That was then. This
23 is now. He's charged with an overwhelming number of
24 significant charges, and even if we were to credit the
25 statement, and I have no reason to doubt the statement, that

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1 somehow -- made back in 2009 by A.U.S.A. Schneider that the
2 DDMC is going down, it strikes the Government that, as we sit
3 here today, Mr. Darrah is the national vice president. There
4 was no indication that after that statement he saw the error of
5 his ways and left the DDMC even after being notified, and the
6 indictment certainly does not suggest that post-2009 the DDMC
7 became a benevolent riders' club as opposed to an outlaw
8 motorcycle club.

9 His willingness to remain in that particular position,
10 leadership position, I think is of some significance even when
11 relayed to him that charges would -- more significant charges
12 would be coming down and perhaps is indicative of the attitude
13 that members of this criminal organization have towards law
14 enforcement, and perhaps they are confidence that they can
15 thwart efforts, based on their prior history, against them.

16 So, with that, I have nothing further, Your Honor.

17 **THE COURT:** The case is a presumption, there's no
18 dispute about that, Ms. Maceroni, is there?

19 **MS. MACERONI:** No, Your Honor.

20 **THE COURT:** It's a presumption case. The combination
21 of charges here and the ten-year mandatory minimum upon
22 conviction for at least one, if not more than one, of the
23 offenses, the combination of offenses that add up to a, upon
24 proffer at least, 30 years to life recommended sentencing range
25 is a circumstance that is considerably different than what was

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1 faced earlier when A.U.S.A. Schneider was in charge apparently
2 of communicating these things to the defendant through counsel.
3 He was facing a four-year felony, and faces -- I haven't even
4 counted them -- I don't know how many counts of the indictment,
5 numerous, at least a dozen, if not more, in which he is charged
6 with the collection of charges adding up to a mandatory minimum
7 of 30 to life likely the guideline range. The defendant's
8 flight risk is heightened beyond what would be indicated in the
9 presumption of detention case.

10 The bond statute requires the Court to begin with the
11 presumption that there are no conditions or combinations of
12 conditions that might reasonably assure the appearance of the
13 individual and safety of the community or of any other person.
14 The nature of the allegations as proffered and, again, as in
15 the indictment with respect to overt act allegations, manner
16 and means of the conspiracy, indicate that the defendant was
17 individually involved in numerous instances of threats of
18 bodily harm, threats up to, and perhaps even including, threats
19 to kill one or more other individuals for a violation of club
20 rules and protocols. The indictment speaks in numerous places
21 of fairly brutal violence being visited upon various members or
22 associates of the club.

23 The Court is very concerned about danger to the community,
24 danger to individuals, and the heightened risk of flight in
25 spite of the defendant's medical condition, which I'm not sure

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24

1 how dire it is. Numerous medications are prescribed or have
2 been prescribed apparently, but those are matters that are
3 commonly taken care of in a custodial setting. He may not be
4 getting the exact dosages and details that perhaps were
5 prescribed by a private physician, but the prison system and
6 the contract detention facilities are equipped, according to
7 the information that I have, consistent information that I
8 have, to deal with troublesome medical circumstances, and I do
9 not think that a tracheotomy and the array of medications that
10 are required weighs particularly heavily in the balance of
11 whether the defendant presents a danger to the community.

12 That leads to a risk of flight. At the very least, I
13 think he does present the risk of flight. In fact, the
14 presumption amplifies that. I think he does present a danger
15 to the community on the details proffered by Government
16 counsel, the details of which, by the way, have not been
17 substantially rebutted or contested. The indictment speaks for
18 itself. The grand jury heard the evidence and voted upon those
19 details, as it is suggested in the overt acts and the manner
20 and means.

21 To me the danger is evident and the presumption prevails.
22 There has not been a showing that inclines the Court to think
23 any differently. I don't shift the burden formally to the
24 defendant in that regard. I consider the whole of the
25 situation with the presumption in mind as the starting point of

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1 the analysis. I don't think it's much more than that, at least
2 it will not be for this determination.

3 But my decision is nonetheless that there are no
4 conditions or combination of conditions that will reasonably
5 assure the safety of any other person or the community or
6 ensure the appearance of the person if he were released upon
7 such conditions. So the defendant is ordered detained pending
8 further order of the Court.

9 - - -

10 **C E R T I F I C A T I O N**

11 I certify that the foregoing is a correct transcription of
12 the record of proceedings in the above-entitled matter.

13
14 s/ Sheri K. Ward
15 Sheri K. Ward
Official Court Reporter

August 23, 2012
Date

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